IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 143 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

COMMISSIONER OF INCOME TAX

Versus

BHARAT VIJAY MILLS LTD.

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 23/12/98

ORAL JUDGEMENT (per R. Balia, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', at the instance of the Commissioner of Income-tax, Gujatat-I, Ahmedabad, has referred the following two questions of law arising out of its order in I.T.A. No. 1211/Ahd/82 relating to A.Y. 1977-78.

"1. Whether, on the facts and inthe circumstances of the case, the Appellae Tribuanal has been right in law in holding that the payment of Rs. 48,000/- as deferred annuity premium in respect of two Managing Directors should not betreated as perquisites?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law ino holding that the assesee is entitled to investment allowance under sec. 32A of the Income-tax Act, 1961 as claimed?"

Question No. 1 relates to allowability of the expenses incurred by the respondent company in payment of deferred annuity premium in respect of two Managing Directors. The issue has been squarely covered by the decision of this court in Gujarat Steel Tubes Ltd. v. CIT, 210 ITR 358 where the like question was considered. It was held that amount in the nature of premium paid in respect of premium on deferred annuity on lives of directors of assessee company is not allowable u/s 37 of the Income-tax Act. Once the provisions of section 37 are not applicable, there is no application of sec. 40(c).

2. Following the aforesaid decision, we answer question No. 1 referred to us in negative, that is to say, in favour of revenue and against the assessee.

3. About Question No. 2 we find that this appears to have been incorrectly referred to this court for its opinion. The ITO, CIT (Appeals) as well as the tribunal have all held in favour of revenue that investment made in installing of machinery for the purpose of the plastic division of the respondent company for manufacture of plastic articles is not eligible for investment allowance u/s 32A inasmuch as plastic is not the article or thing specified in list in the 9th Schedule of the Act. In view of sub-sec.(2) of sec. 32A only such investment in plant or machinery can be considered for deduction as Investment Allowance which has been installed for the purpose of business of construction or manufacture or production of any one or more of the articles or things specified in the list in the 9th schedule. The assessee's contention is that respondent company is having composite activities. Its main industrial activity is to manufacture textiles which finds place in the list in the 9th Schedule. It is therefore entitled to be considered for deduction for Investment Allowance. This plea of assessee was not accepted. No application

for referring this question had been made by the assessee against whom the issue has been decided. It also does not appear that the revenue had asked for reference of question No. 2. The tribunal in the statement of case has referred this question by stating that 'CIT (Appeals) allowed the appeal of the assessee which the tribunal has affirmed' is not correct. From the perusal of the appellate order of CIT (Appeals) as well as tribunal, we find that finding has been to the contrary.

4. In view of our aforesaid circumstances, we decline to answer Question No. 2 though prima facie we are in agreement with conclusion reached by the tribunal.

The assessee has not appeared in spite of service. There shall be no order as to costs.
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